

REMARKS

I. Preliminary Remarks

The Examiner objected to claim 54 as reciting the singular term "nucleotide" instead of the plural term "nucleotides." Claim 54 has been canceled by the foregoing amendment. Therefore, the objection to claim 54 is moot.

II. The Rejections under 35 U.S.C. § 112, First Paragraph, for Lack of Written Description, Should Be Withdrawn

Claims 21-24, 28-31, 35, 36, 38, 39, 44, 45, 47-53 and 55-65 are rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement. In particular, the Examiner stated that the claims are directed to any nucleic acid comprising the fragment ATC or fragments that comprise two nucleotides, and these polynucleotide fragments are not adequately described in the specification. In view of the foregoing amendment, this rejection is moot.

Amended claims 21 and 45 omit the term "fragments thereof that includes said thymidine." Claims 24, 46-48 are canceled without prejudice. Thus, the Applicants request that the rejection of claims 21-23, 28-31, 35, 36, 39, 44-45, 49-53 and 55-56 U.S.C. § 112, first paragraph, be withdrawn.

III. The Rejections under 35 U.S.C. § 102 Should Be Withdrawn

Claims 21, 22, 28, 29, 31, 35, 44, 45, 47-49, 51-53 and 57-65 are rejected under 35 U.S.C. § 102(b) as being anticipated by Yoo *et al.*, (*Virology* 191: 889-899, 1992) and Brown *et al.*, (*Nucleic Acids Res.* 20: 5041-5045, 1992). In addition, claims 21-24, 28-31, 35, 36, 44, 45, 47-50, 53, 55 and 56 are rejected under 35 U.S.C. § 102(b) as being anticipated by Collier *et al.*, (*J. Gen. Virol.* 79: 2359-2366, 1998). The Examiner stated that the claims encompass any nucleic acid having the function of enhancing protein expression when incorporated downstream of an expression regulatory promoter sequence and upstream of a protein coding sequence, and therefore are anticipated. These rejections are now moot in view of the foregoing amendment.

Amended claims 21 and 44 are directed to a polynucleotide comprising the continuous nucleotide sequence consisting of nucleotides 181-341 of SEQ ID NO: 1 including one thymidine inserted between positions 206 and 207 of SEQ ID NO: 1. The insertion of the thymidine between nucleotides 206 and 207 of SEQ ID NO: 1 creates a

novel sequence that is not anticipated by the teachings in Yoo *et al.*, Brown *et al.* or Collier *et al.* The amended claims are no longer directed to fragments of the nucleotide sequence comprising nucleotides 181-341 of SEQ ID NO: 1 that are allegedly found in the prior art.

Amended claim 45 is directed to a polynucleotide comprising the nucleotide sequence set out in SEQ ID NO: 7 over its entire length. Amended claim 55 is directed to an expression vector comprising a promoter sequence, a protein coding sequence and the full length nucleotide sequence of SEQ ID NO: 7 over its entire length. The full length sequence of SEQ ID NO: 7 is a novel sequence that is not anticipated by the teachings Yoo *et al.*, Brown *et al.*, or Collier *et al.*

The foregoing amendments render the rejection of claims 21-23, 28-32, 35, 36, 44, 45, 47-53, 55 and 56 under 35 U.S.C. § 102(b) moot. The Applicants respectfully request that this rejection be withdrawn.

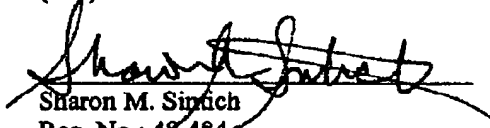
CONCLUSION

In view of the amendment and remarks made herein, claims 21-23, 26, 28-31, 33-39, 44, 45 and 49-53, 55 and 56 are in condition for allowance and the Applicants request notification of the same.

Respectfully submitted,

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